UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington D C 20230

May 31, 1995

Office of the Secretary
Federal Communications Commission
Suite 480
2000 M Street, NW
Washington D.C. 20554

c/o John Reed

SUBJECT: Notice of Proposed Rulemaking Before the Federal Communications Commission
In the matter of amending Parts 2 and 15 of the Commission's Rules to Deregulate Equipment Authorization Requirements for Digital Devices.
ET Docket No. 95-19(FCC 95-46)

Dear Sir:

Thank you for the opportunity to comment on your proposal. It is imperative that I share my comments with FCC Commissioners on this matter because of the potential consequences on U.S. exports and competitiveness as a result of the FCC decision on this notice of proposed rulemaking(NPR).

I am Director, of the Office of European Union and Regional Affairs, International Trade Administration, U.S. Department of Commerce. I have considerable familiarity with FCC and European Union requirements for electromagnetic compatibility (EMC) or electromagnetic interference (EMC) by virtue of the mandate to my office to expand market access for U.S. exporters in the face of European Union barriers to trade based on product standards and related product testing and certification. For the past three years, I have been directly working with USTR and the FCC's Office of Engineering and Technology in Mutual Recognition Agreement negotiations with the European Union. I am concerned that this instant proposed rule making would adversely affect these negotiations and seriously affect potential improvements for market access for U.S. exporters of digital, analogue, and wireless communications devices to the European Union.

Before I comment on the proposal, let me describe the system we are trying to access in Europe.

Beginning in 1991 and continuing into 1996 the European Union has engaged in a long process that changed the legal requirements for product testing and product certification for all products which radiate and are susceptible to electromagnetic interferences. The EU requirements began as discretionary and an alternative to existing national EU member state requirements. In 1996 the EU will apply one harmonized mandatory testing and product certification system that allows manufacturers to declare conformity to requirements under certain standards and requires third party intervention in product evaluation, test results interpretation and interpretation of requirements related to standards.

The changes in the EU system affect U.S. business and have effects on FCC steps to change rules that affect imports from Europe.

1.) Where once most EU member states maintained few or little EMC requirements; by 1996 no product with EMC characteristics may be marketed in any part of the 15 member countries that has not complied with mandatory technical requirements.

2.) Where many products which clearly are covered by existing European Norms can be tested and certified in compliance with requirements by the manufacturer; many more products and many manufacturers in the information technology and telecommunications terminal business do not fit within these existing European Norms and are required to seek product evaluations by an EU-government designated third parties.

3.) While in the United States there is no distinction between the testing requirements carried out by third parties and manufacturers, the European Union requires more expensive testing procedures for U.S. manufacturers than for Europe approved and designated testing and certification bodies for the identical product to be tested and certified. This official designation of product testers and product certifiers is similar to an "accreditation" to international ISO CASCO guides on lab accreditation.

4) Absent a mutual recognition agreement with the U.S. government, U.S. testing and certification bodies will not be recognized at any time to perform EU-required product certifications and therefore U.S. exporters, particularly those who are not completely covered by appropriate European Norms will be at considerable product approval cost disadvantage relative to European manufacturers supplying the European market because of the geographical penalty of not being able to perform product evaluations in North America and because product evaluation is limited under EU EMC self certification and therefore more expensive than what is available to European manufacturers.

5.) The European Union defines its interest in negotiating market access to Europe in EMC testing and certification only to the extent that the U.S. government maintains its own requirements to which European manufacturers must comply and for which "mutual" recognition can be negotiated. If the FCC has no reciprocal requirement, the EU will see no need to negotiate, the USG loses negotiating leverage and U.S. manufacturers are undercut in improving market access to the EU market for EMC testing.

Therefore, U.S. market access to the European Union measured in the cost of testing and certifying products to EU EMC requirements depends to a considerable degree on the successful outcome of the ongoing U.S.-EU mutual recognition agreement negotiations. The size of the cost cannot even be estimated at this time by USDOC, FCC or current U.S. exporters because the EU's EMC system is still in a "transition" period ending January 1, 1996. However, there is direct experience with EU directives already applied in machinery safety and pharmaceuticals that indicate that trade effects will be quite severe. (See for example the attached article from May 1995 Crain's Chicago Business.) It is my distinct impression from this experience with other EU directives that U.S. manufacturers are underestimating the adverse effects of the EU mandatory

EMC requirements in 1995 because they are complying with existing (and lax) EU national requirements until 1996.

Comments on the FCC proposed rulemaking.

FCC deliberations on this subject rulemaking should take these market access conditions under consideration as they consider how to change market access for domestic and foreign producers regarding FCC requirements for EMC testing and certification under Pt. 15. At the request of the Telecommunications Industry Association, the American Electronics Association, the Electronic Industries Association, the American Council of Independent Laboratories, and the Information Technology Industry Council, the U.S. Department of Commerce and the U.S. Trade Representative are seeking improved market access to the 15 EU member states covering more than $13 billion of trade and affecting tens of thousands of U.S. jobs through mutual recognition agreements (MRAs). These negotiations are premised on new provisions of the Multilateral Agreement on Technical Barriers to Trade implemented in 1995 that provides for bilateral mutual recognition agreements in the event that a country does not provide national treatment for required testing, inspections, and product certification. As the EU does not provide national treatment for EMC testing and product certification, the only means by which the United States can reestablish market access for its manufacturers to the European Union is by successfully concluding MRAs. MRAs are based on the achievement of mutual benefit to both parties to the agreement, i.e., the EU will not want an MRA if there is no benefit to their exporters in it. In other words, the negotiating leverage to open the EU's market to our exporters rests with the FCC's ability to control EU exporters access to the U.S. market. Proposed changes to unilaterally change the FCC procedures and requirements to market products in the United States should not undercut and should in fact support this goal

The FCC proposal to change product certification procedures by unilaterally bestowing on EU manufacturers the responsibility of declaring the product as meeting US requirements gives to Europeans more than they ever intend to unilaterally bestow on U.S. exporters under important commercial conditions. Moreover, proposing that foreign test labs be accredited on an equal technical basis with domestic test labs and no providing no further conditions for qualification such as reciprocal market access gives Europeans more access than they intend to bestow on U.S. manufacturers absent the incentive to enter into MRAs.

The proposal to change the FCC requirement for EMC test lab listing and FCC product certification from that of a required FCC approval to that of allowing manufacturers anywhere in the world to certify that products meet the FCC technical requirements would leave no market access incentive for Europeans to conclude an MRA and therefore would leave the EU market closed to U.S. testing and product evaluations that go into EMC product approvals for many companies and many products under very substantial circumstances relative to European competitors while at the same time opening the market for U.S. companies and global competitors (including Europeans) equally.

The FCC should give careful consideration to the implications of its proposed rulemaking in this sector and these procedures to ensure that U.S. export interests are not undercut. The FCC should include in its potential rules sufficient government control of the market regarding imports as to provide an incentive to conclude MRAs with the EU and any other country who pursues this approach to conformity assessment in the context of trade. The FCC should shape its requirements for product certification, lab accreditation, testing procedures and product evaluations in such a way as to account for the fact that not all countries grant national treatment for EMC conformity assessment and that FCC procedures play an important role in creating the incentive for market access in overseas markets. Rulemaking proposed in this notice can benefit U.S. consumers and producers but such changes, where possible, should not disadvantage but should benefit U.S. exporters. Rules that take explicit account of this new multilateral requirement for reciprocal benefits in concluding MRAs should be developed rather than unilaterally changing a rule for the EU producer as well as the U.S. producer when the U.S. producer is not similarly circumstanced in the EU market.

Sincerely,

Charles M. Ludolph
Director, Office of European Union and Regional Affairs

Attachment

International

Sticker shock for exporters to Europe

By JOANNE CLEAVER

World View

A new seal of approval being phased in by the European Union is supposed to stand for "European Conformity," but local manufacturers say it might as well mean "European Confusion."

The CE mark recently burst into the consciousness of Chicago-area manufacturers who export to members of the European Union. The effort required to bring their products—many of which already meet standards in individual European countries—in line with the new standard is so onerous and expensive that some companies are withdrawing certain goods from the Euromarket.

"If you have a product that you've shipped two or three hundred times to Europe, all of a sudden, you can't do that anymore," says David Lohbeck, manager of the Skokie office of TUV Rheinland, a Germany-based product-testing laboratory.

European customs officials are on the lookout for items that don't have the CE mark—but should. "If it gets caught in France or Portugal, the product gets pulled Europewide," says Mr. Lohbeck.

One of his clients, whom he declines to name, shipped a piece of machinery, got it through customs and started installing it at the customer's factory. At that point, the customer noticed that the machine bore no CE mark. No mark, no go. The customer refused to turn the machine on or pay for it until the manufacturer made the appropriate adjustments.

"I hate this stuff," says Jim Slanina, chief operations officer of Graymills Corp., a Chicago-based maker of specialty pumping systems for presses and coolant systems for machine tool makers.

The company has been exporting to Europe for years, but under the CE requirements, Graymills has to "have a totally separate design to sell to the European community," moans Mr. Slanina.

To further complicate matters, the specifications are so inscrutable that even seasoned engineers are dazed.

"I tried to read through this stuff. It's mind boggling," Mr. Slanina says. "I don't understand half of it."

Consternation over the CE mark is so widespread that companies are scrambling to get advice from the few consultants who do understand. The International Trade Center of Chicago's North Business and Industrial Council holds a workshop on the topic today.

The idea behind the CE mark seems good. It assures buyers that the products they're purchasing meet stringent safety standards. It's also supposed to eliminate redundant testing and inconsistent rules among countries.

Such standards have been in effect since the mid-1970s for consumer appliances and electronics and other goods, such as toys. In January, the CE mark became required for machinery. Next January, it will be compulsory for devices that produce electromagnetic emissions. In January 1997, it will be required for all low-voltage equipment.

STEVE LEONARD

European customs officials are hunting for items that don't have a new quality seal—but should, warns consultant David Lohbeck.

Manufacturers don't have to submit items to a third-party lab, such as Underwriters Laboratory, to get a CE mark. Instead, they're supposed to digest the instructions themselves, make the proper adjustments to their products, document the whole process and then stick on the labels.

If only it were that simple.

Atlas Electric Devices, a Chicago-based manufacturer of analysis equipment, has found it must replace perfectly good circuit breakers, switches and other minor components with those that meet CE requirements—and are as much as three times as expensive.

So far, Atlas has spent $250,000 to comply with the new rule. "We can't afford it," says Al Mysiech, a senior project engineer for Atlas.

Redesigning would cost $8,000 to $10,000 per model, he reports. For some $600 items, such as analyzers that measure how well fabrics weather outdoors, the cost of re-engineering exceeds the profits Atlas makes on selling them in Europe. So, Atlas is throwing in the towel: It no longer will ship lower-margin items to Europe.

Even manufacturers whose products have been covered by the CE directive for several years can't rest easy.

Darwin Bromley, president of Mayfair Games Inc., a Niles-based producer of card and board games, had to prove a few years ago that the ink used on the games didn't contain lead. A competitor that makes games with wooden pieces that have a clear finish recently had an entire shipping container of the games impounded at customs because officials couldn't tell if the clear finish was acceptable under CE standards.

"We've been dodging the bullet for two years," says Mr. Bromley. "We're just waiting for a call from the other end: 'Hey, this won't clear.' "

The most ironic part of the whole exercise, says Graymills' Mr. Slanina is that simply substituting one kind of circuit breaker or screw for another is unlikely to actually improve the or product.

"If you're a good manufacturer, when you go through the CE, you don't have any better of a product than when you started," he says. "There's no benefit coming from it."